

## ELECTION AND TRAVERSAL

### Election With Traverse

In response to the election/restriction requirement, Applicants elect with traverse to prosecute in this application claims to the following species. (Page numbers refer to the page of the 12 February 2009 office action at which each elected species is identified.)

Species V (Page 2)

Species B (Page 3)

Species a (Page 3)

Species a2 (Page 3)

Species 2 (Page 4)

Applicant believes that at least the following claims define the elected species. Claims 41(e), 42, 45, 49, 50, and 52 through 58. Once the claims to be examined in this application are determined with finality, any necessary amendment to claim 41 will be made. For purposes of election only, claim "41 e)" refers to present claim 41 excluding sub-paragraphs a) through d) and f) through g).

### Traversal of the Election/Restriction Requirement

**First Grounds of Traversal** MPEP 1893.03(d), in discussing PCT Rule 13, states, in pertinent part, that "Examiners are reminded that unity of invention (not restriction practice pursuant to 37 CFR 1.141-1.146) is applicable in national stage applications submitted under 35 U.S.C. 371." Applicant's application was filed under 35 U.S.C. 371. Form Paragraph 18.19 in this section of the MPEP provides that in the case of 35 U.S.C. 371 applications, restriction is evaluated as in PCT Rule 13.1 and, when required, is pursuant to 35 U.S.C. 121 and 372.

35 U.S.C. 121 merely sets forth the general rules applying to divisional applications. For example, this section provides that a parent application in which the Office has required restriction which results in a divisional application, cannot be used as prior art against the divisional, etc.

35 U.S.C. 372(a) states in pertinent part that "All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an

international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office." It is submitted that the terms "substance" and "procedure" as used in 35 U.S.C. 372(a) do not embrace the non-substantive and non-procedural preliminary action of a restriction requirement. To hold otherwise contravenes MPEP 1893.03(d).

37 CFR 372(b) is not pertinent here as it relates only to international applications not originating in the United States.

The Examiner (properly) relies on PCT Rule 13 to make the restriction requirement. It is submitted that the four-way restriction requirement made in the International Search Report of the priority PCT application applies to this national stage application as well. Specifically, the PCT restriction (unity of invention) requirement made in the priority PCT application reads as follows:

*"This International Searching Authority found multiple (groups of) inventions in this international application, as follows:*

- 1. claims: 1-19 Method of establishing a blasting system.*
- 2. claims 20-30 Marker for use in a blasting system, marking apparatus comprising said marker, branch controller comprising said marker and row controller comprising said marker.*
- 3. claims 31-39 Blasting system.*
- 4. claim 40 Method of forming a graphical representation of a plurality of detonators."*

Applicant requests that the restriction requirement be modified to conform to the above four-way restriction requirement.

**Second Grounds of Traversal** It is respectfully submitted that the restriction requirement extends far beyond what is appropriate and permitted under the applicable statutes and rules. PCT Rule 13.2 provides that the unity of invention requirement is fulfilled only when there is a "technical relationship" involving one or more of the same or corresponding "special technical features". The term "special technical fea-

"tures" is defined as "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." As set forth in MPEP 802.01 a restriction requirement is appropriate only if the initially presented claims apply to inventions which are independent and distinct.

The Examiner has identified as separate species various embodiments which in fact have a technical relationship involving one or more of the same or corresponding special technical features. In this regard, please see Chapter 10 of the *PCT International Search and Preliminary Examination Guidelines* ("Guidelines"). Section 10.01 of the Guidelines also defines the term "special technical features" as presented in PCT Rule 13.2 "as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art." As discussed in the following sub-paragraphs of Chapter 10 of the Guidelines, the "special technical features" must be those which provide novelty or non-obviousness to the claim.

Species A and Species B identified at the top of page 3 of the February 12, 2009 office action ("the OA") do not appear to be either independent or distinct inventions. Both define a structure wherein the location of the marker is a physical or geographic location (Species A) or a notional location (Species B). The location of the marker is the technical solution provided by both Species A and Species B. With respect to the search effort involved, it is submitted that a search on one of the two identified species would necessarily embrace all the prior art relevant to the other one of the two identified species.

The same discussion applies to Species a and Species b and Species a1 and Species a2.

From the bottom of page 3 to page 4 of the OA another grouping of allegedly distinct species, Species 1 and Species 2, is alleged. The alleged distinctiveness is based on the contention that a detonator sequence configured so that the zones follow one another successively in a geographical sense is distinct from a configuration in which at least one zone extends in the form of a branch line of detonators from a main line of detonators. It is respectfully submitted that these claims are neither independent nor distinct from one another. Both refer to the geographical layout of the sequences and therefore concern the same type of technical solution. Further, a search

relative to one of these species will necessarily cover the same area of search required for the other.

At paragraph 3 near the bottom of page 4 of the OA, the Examiner relies on PCT Rules 13.1 and 13.2 and states that the species identified by the Examiner lack the same or corresponding special technical features for the reasons listed. Applicants respectfully traverse that statement for the reasons noted above. Further, it should be a sufficient response to note that the International Stage examination of the PCT application, in conformity with Rules 13.1 and 13.2, made only a four-way restriction requirement. It is submitted that the four-way restriction requirement made in the International Search is appropriate for this national stage application.

**Request For Relief**

In view of foregoing, it is respectfully requested that the restriction requirement at least be modified to a four-way restriction as was done in the PCT International Stage, and that other relief be provided as may be determined.

Respectfully submitted,

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Date: March 12, 2009